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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
ALEXANDRIA DIVISION

STACY TULLOS (#365832)

DOCKET NO. 11-CV-1503; SEC. P

VERSUS

JUDGE JAMES T. TRIMBLE JR.

RAPIDES PARISH SHERIFF'S OFFICE

MAGISTRATE JUDGE JAMES D. KIRK

REPORT AND RECOMMENDATION

Pro se plaintiff Stacy Tullos, proceeding in forma pauperis, filed the instant civil rights complaint pursuant to 42 U.S.C. §1983. At the time of filing, Plaintiff was incarcerated at the Lincoln Parish Corrections Center in Ruston, Louisiana. He claimed that he was the victim of excessive force following his arrest by officers of the Rapides Parish Sheriff's Department in June 2010. He sued Sheriff Chuck Wagner, Officer Chris Holt, Officer Webb, Officer Orr, and Officer Little.

This matter has been referred to the undersigned in accordance with the provisions of 28 U.S.C. §636 and the standing orders of the Court. For the following reasons, it is recommended that the complaint be dismissed pursuant to Rule 41 of the Federal Rules of Civil Procedure.

***Procedural Background***

Plaintiff filed a civil rights complaint on August 18, 2011, and was granted leave to proceed *in forma pauperis* on September 1, 2011. [Doc. #1, 8] He was ordered to amend his complaint on November 10, 2011. [Doc. #14] On March 2, 2012, because Plaintiff failed to comply with the November 2011 order, the undersigned

recommended dismissal of the complaint pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. [Doc. #15] On April 16, 2012, without objection, the Court adopted the recommendation and dismissed the complaint. [Doc. #17]

On April 25, 2012, Plaintiff filed a motion for reconsideration of the dismissal, stating that he was getting out of jail and was going to hire counsel. [Doc. #18] On May 14, 2012, the district judge granted reconsideration, and ordered Plaintiff to hire counsel and amend his complaint within ninety days. [Doc. #21] On May 31, 2012, Plaintiff filed a motion for extension of time to seek counsel, [Doc. #22], which was granted on June 1, 2012. [Doc. #23] Another motion for extension of time was filed on October 9, 2012 [Doc. #26], and granted on October 12, 2012 [Doc. #27, 28]. To date, no attorney has enrolled in the case nor has an amended complaint been submitted in accordance with the Court's order of November 10, 2011.

### ***Law and Analysis***

Federal Rule of Civil Procedure Rule (FRCP) 41(b) permits dismissal of claims "for failure of the plaintiff to prosecute or to comply with ... any order of court...." The district court also has the inherent authority to dismiss an action *sua sponte*, without motion by a defendant. See Link v. Wabash R.R.Co., 370 U.S. 626, 630-31, 82 S.Ct. 1386, 1388-89, 8 L.Ed.2d 734 (1962). "The power to invoke this sanction is necessary in order to prevent undue

delays in the disposition of pending cases and to avoid congestion in the calendars of the [d]istrict [c]ourts." McCullough v. Lynaugh, 835 F.2d 1126, 1127 (5th Cir.1988). Plaintiff has failed to timely comply with Court orders directing him to amend his complaint or hire counsel, despite being given ample time (more than one year) to do so. [Doc. #14, 21, 23, 27, 28]

### ***Conclusion***

**THEREFORE, IT IS RECOMMENDED** that Plaintiff's complaint be **DISMISSED WITHOUT PREJUDICE** in accordance with the provisions of FRCP 41(b).

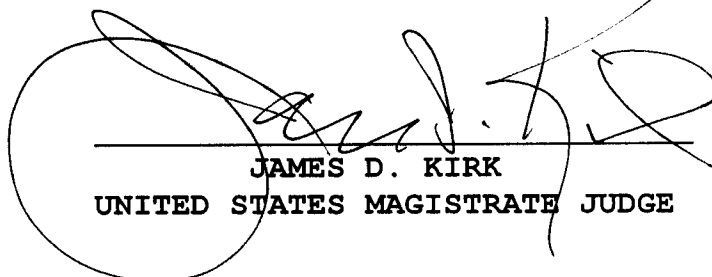
### ***Objections***

Under the provisions of 28 U.S.C. § 636(b)(1)(C) and Fed.R.Civ.P. 72(b), the parties have fourteen (14) calendar days from service of this Report and Recommendation to file specific, written objections with the clerk of court. No other briefs or responses (such as supplemental objections, reply briefs etc.) may be filed. Providing a courtesy copy of the objection to the magistrate judge is neither required nor encouraged. Timely objections will be considered by the district judge before he makes his final ruling.

**FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN FOURTEEN (14) CALENDAR DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY, EXCEPT UPON GROUNDS OF PLAIN ERROR, FROM**

**ATTACKING ON APPEAL THE UN-OBJECTED-TO PROPOSED FACTUAL FINDINGS  
AND LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT JUDGE.**

**THUS DONE AND SIGNED** at Alexandria, Louisiana, this 16<sup>th</sup> day  
of January, 2013.



**JAMES D. KIRK**  
**UNITED STATES MAGISTRATE JUDGE**